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SERVICE DATE – MARCH 3, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 260X)¹

TENNESSEE RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN SCOTT COUNTY, TN

STB Docket No. AB-290 (Sub-No. 259X)

TENNESSEE RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND CAMPBELL COUNTIES, TN

Decided: March 2, 2006

By petition filed on February 28, 2005, in STB Docket No. AB-290 (Sub-No. 260X), Tennessee Railway Company (TNR), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 27.01-mile line of railroad between milepost TE-0.95 near Oneida, and milepost TE-27.96 near Nick's Creek, in Scott County, TN (the northern segment). Notice of the filing was served and published in the Federal Register on March 18, 2005. In a decision served on June 17, 2005, the petition for exemption was granted, subject to environmental, public use, trail use, and standard employee protective conditions.

The line involved in STB Docket No. AB-290 (Sub-No. 260X) is part of a 42-mile railroad line that extends from Oneida to Devonia, TN. On December 30, 2004, in STB Docket No. AB-290 (Sub-No. 259X), TNR filed a notice of exemption to abandon the line between Nick's Creek (milepost TE-27.96) and Devonia (milepost TE-42.00) (the southern segment). Notice of the exemption was served and published in the Federal Register on January 19, 2005. On May 20, 2005, National Coal Corporation (NCC) timely filed an offer of financial assistance (OFA) to purchase the 14.04-mile southern segment. By decision served on May 25, 2005, NCC was found to be financially responsible and the effective date of the abandonment exemption was postponed pending resolution of the OFA process. In a decision served on June 17, 2005, in STB Docket No. AB-290 (Sub-No. 260X), the Board held the OFA process in STB Docket No. AB-290 (Sub-No. 259X) in abeyance to afford NCC (or any other interested party) the

¹ These proceedings are not consolidated, but are factually related. A single decision is being issued for administrative convenience.

opportunity to file an OFA to acquire the northern segment, and the Board provided that, if an OFA were filed for that segment, the OFA process would proceed concurrently for the purchase of both segments.

On June 27, 2005, NCC timely filed an OFA to purchase the northern segment. In a decision served on June 30, 2005, NCC was found financially responsible and the effective date of the exemption authorizing abandonment of the northern segment was postponed to permit the OFA process to proceed. The Board also recommenced the OFA process as to the southern segment, and told the parties that they may negotiate regarding both segments for a 30-day period starting on June 27. Furthermore, the Board made any request to establish the terms and conditions of the purchase of one or both segments due by July 27, 2005.

On July 12, 2005, NCC, NSR, and TNR jointly filed a petition for extension of the July 27 deadline to provide additional time for negotiations. The parties asked that the Board make a request to set terms and conditions due by August 15, 2005. The Board granted the extension in a decision served on July 14, 2005. The Board further extended the deadline to September 30, 2005, when it granted similar requests made by the same parties in decisions served on August 12, 2005, and September 15, 2005.

On September 29, 2005, NCC, NSR, and TNR jointly filed a petition asking the Board to hold the proceedings in abeyance until December 15, 2005. The parties explained that, although they had reached an agreement in principle concerning the purchase and operation of the instant lines by a subsidiary of NCC, they needed time to finalize the agreement. The Board granted the request in a decision served on September 30, 2005. The agency further extended the deadline to February 28, 2006, when it granted similar requests made by the same parties in decisions served on December 12, 2005, January 31, 2006, and February 15, 2006.

By letter filed on February 28, 2006, NCC advised the Board that the parties have finalized a purchase agreement, and that NC Railroad, Inc., a wholly owned subsidiary of NCC, has consummated the transaction by purchasing the lines from TNR. On March 2, 2006, NCC submitted an additional letter to the Board in which it guaranteed the financial responsibility of its subsidiary. See 49 CFR 1152.27(i)(1)(i).

When a carrier and a person offering to purchase a line enter into an agreement for continued rail service, the Board is required to approve the transaction and dismiss the notice of exemption or petition for exemption. See 49 U.S.C. 10904 and 49 CFR 1152.27(f)(2). Accordingly, the sale of the lines will be approved and the petition for exemption and the notice of exemption will be dismissed.²

² The dismissals render moot the environmental conditions imposed in decisions served on February 22, 2005, and June 17, 2005. Moreover, the sale of the lines precludes the trail use and public use sought by Cumberland Trail Conference in its May 31, 2005 filing.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10904 and 49 CFR 1152.27(f)(2), TNR's petition for exemption and notice of exemption are dismissed.
2. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary